IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 12286 of 2007(K)

PETITIONERS:

1. SAROJINI. W/O.LATE RAMAN,
THANDAYATHUKUDI HOUSE, KUTTILANJI,
ERNMALLOOR P.O.,KOTHAMANGALAM, ERNAKULAM DISTRICT.

2. T.M.ABDUL AZEEZ,
THOTTATHIKULAM HOUSE,KUTTILANJI,
ERNMALLOOR P.O.,KOTHAMANGALAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS:

1. P.S.NAVAS ,PULICKAPARAMBIL HOUSE,
KUTTILANJI,ERAMALLOOR P.O.,KOTHAMANGALAM,
ERNAKULAM DISTRICT.

2. NELLIKUZHI GRAMA PANCHAYAT, NELLIKUZHI PO.,
KOTHAMANGALAM, ERNAKULAM DISTRICT,
REPRESENTED BY SECRETARY.

3. THE KERALA STATE POLLUTION CONTROL BOARD
THIRUVANANTHAPURAM,REPRESENTED BY SECRETARY.

4. THE SENIOR ENVIORNMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE,GANDHI NAGAR,ERNAKULAM.

5. THE DISTRICT MEDICAL OFFICER,
OFFICE OF THE DISTRICT MEDICAL OFFICER,
ERNAKULAM.

R2 BY ADV. SRI.P.K.MUHAMMED
R3 & R4 BY ADV.SRI.M.K.CHANDRAMOHAN DAS, SC
R5 BY GOVT.PLEADER SRI.K.J.MOHAMMED ANZAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No. 12286 OF 2007

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DATED THIS THE 12TH SEPTEMBER, 2007

JUDGMENT

Sri.P.V.Baby, counsel for the petitioners invited my attention to the interim order dated 10.4.2007 and submitted that pursuant to that order, the District Medical Officer has filed a report which will show that the allegations of the petitioners are substantially correct. Counsel therefore requested that an interim order be passed restraining the Panchayat from issuing licence and the Pollution Control Board from issuing any consent to the 1st respondent for operating the proposed hollow brick manufacturing unit lest the petitioners as well as the children attending the Madrassa which is situated at a distance of just 39.5 metres from the proposed unit should suffer from pollution.

2. Mr.P.K.Muhammed, counsel for the 2nd respondent-Panchayat would refer to the judgment of this Court in W.P.(C) No.17851 of 2007 and submit that the said judgment relates to the very same industry and this Court has relegated the parties to the civil court. According to Mr.Muhammed, in view of the judgment in W.P.(C) No.17851 of 2007, the present petitioners also will have to

be relegated to the civil court.

3. Mr.M.K.Chandramohan Das, Standing Counsel for the Pollution Control Board would submit that the consent presently granted to the 1st respondent is only consent to establish the unit and that consent to operate will be granted only after the possibilities of the unit generating pollution are assessed.

4. Even though the party-respondent has been served with notice by special messenger, he has not entered appearance before this Court. Thus, the averments in the Writ Petition, so far as they are against the 1st respondent, stands established by non-traverse. However, I am of the view that this Court will not be justified in considering the grounds on their merits, in view of the judgment of this Court in W.P.(C) No.17851 of 2007. I dispose of the Writ Petition itself issuing the following directions:-

The petitioners are directed to approach the Munsiff's Court, Muvattupuzha by filing appropriate impleadment application in O.S.No.158 of 2007. If the petitioners file any such application before the Munsiff's Court, that court will implead the petitioners as additional parties and permit them to raise whatever contest they want to, regarding the hollow brick manufacturing unit proposed to be commenced by the 1st respondent. The petitioners are permitted

to take advantage of the report submitted by the D.M.O. in this Writ Petition, in support of their prospective contentions in that suit. However, in view of the above directions and in view of the situation that the 1st respondent has not resisted the averments in the Writ Petition before this Court and the practically conceded position that the unit has not become operative, I restrain the 2nd respondent-Panchayat from issuing any licence in favour of the 1st respondent for conducting the hollow brick manufacturing unit for a period of two weeks from today. Similarly, I restrain the 4th respondent from issuing any consent to operate the unit to the 1st respondent for the said period. If any application for interim relief restraining the 1st respondent from operating the unit or the statutory authorities from issuing licence or consent is pending before the Munsiff's Court, Muvattupuzha, that court will implead the petitioners also as parties in that application and dispose of that application at the earliest. It is also open to the petitioners to file fresh interlocutory applications seeking appropriate interim reliefs in which case such applications will be disposed of by the learned Munsiff giving top priority.

tgl **(PIUS C.KURIAKOSE, JUDGE)**